



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30)
VAC Chapter Number:	10, 50, 120
Regulation Title:	Amount, Duration, and Scope of Services
Action Title:	Program of All Inclusive Care for the Elderly
Date:	5/2/00

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The sections of the State Plan affected by this action are Services Provided to the Categorically Needy (12 VAC 30-50-10), and Amount, Duration, and Scope of Services for Categorically Needy (12 VAC 30-50-140). The regulations affected by this regulatory action are Program of All-Inclusive Care for the Elderly (12 VAC 30-120-61 through 12 VAC 30-120-68).

The Program of All-Inclusive Care for the Elderly (PACE) is a nationwide replication of the comprehensive service delivery and financing model of long term care for the frail elderly pioneered by On Lok Senior Health services in San Francisco in the 1970s. The various states have been allowed in the past to operate PACE programming through waiver authority from

HCFA. The Balanced Budget Act of 1997 (BBA '97) gave states the option of providing PACE services as an optional Title XIX State Plan service which granted provider status to authorized PACE programs. Prior to BBA '97, DMAS had authority to provide pre-PACE services in a long-term care prepaid health plan which offered Medicaid services under Medicaid capitation while Medicare fee-for-service services were coordinated by the pre-PACE site.

PACE provides a community-based health care plan as an alternative to nursing home care, unless a nursing facility is the appropriate level of care. PACE integrates all aspects of care to include primary, medical and specialty care, nursing, social services, personal care, in-home supportive services, rehabilitative therapies, meals and nutritional care, transportation, hospitalization, and nursing home care.

The mission of the PACE model is to:

- ? Enhance the quality of life and autonomy of frail, older adults;

- ? Maximize the dignity and respect of older adults;

- ? Enable frail, older adults to live in their homes and in the community as long as medically and socially feasible;

- ? Preserve and support the older adult's family unit.

PACE programs achieve this mission by using a multidisciplinary team approach to manage care while providing a comprehensive range of acute care services and preventive care at a cost that is lower, due to its capitation payment mechanism, than the cost of traditional fee-for-service care.

Cost savings result from the pooling of Medicare (Title XVIII) and Medicaid (Title XIX) funding in a care coordination model that allows the PACE provider to manage the care within the program payment limits while providing a full range of services to include long-term care. Such pooling of funds will be permitted by the Health Care Financing Administration (HCFA) in

its approval of the Commonwealth's State Plan Amendment upon the completion of the APA promulgation process.

In order for an individual to qualify for PACE services, he must: be age 55 or older; be certified for nursing home care; be residing in the service or catchment area; and agree to all the conditions and terms of participation. The services that such PACE individuals will receive are, but may not be limited to:

- ? Medical services, including the services of a Primary Care Physician (PCP) and other specialists;
- ? Transportation services;
- ? Outpatient rehabilitation services, including physical, occupational and speech therapy services;
- ? Hospital (acute care) services;
- ? Nursing facility (long-term care) services;
- ? Prescription drugs;
- ? Home health services;
- ? Laboratory services;
- ? Radiology services;
- ? Ambulatory surgery services;
- ? Respite care services;
- ? Personal care services;
- ? Hospice services;
- ? Adult day care services, to include social work services;
- ? Multi-disciplinary case management services;
- ? Outpatient mental health and mental retardation services;
- ? Outpatient psychological services;
- ? Prosthetics; and

? Durable medical equipment and other medical supplies.

PACE provides needed care in the most appropriate setting for the frail individual. Services are provided in the PACE center, at home, and if needed, in the hospital or other institutional setting. Specialty and ancillary medical services are provided, as are long-term care services. If nursing home placement is needed, PACE provides the service and maintains the continuity of care by regular monitoring of the enrollee's condition. By providing preventive and rehabilitative services, chronic conditions can be stabilized and complications averted or lessened, thereby enhancing quality of life. An interdisciplinary team, consisting of professional and paraprofessional staff, assesses enrollees' needs, develops care plans, and delivers needed services.

This additional service option will provide to Medicaid recipients another cost-effective choice, to operate in conjunction with existing institutional and community based services. PACE providers must provide access to all necessary covered services, on a 24-hour basis, to enrollees without any limitations or conditions. Prior to BBA '97, federal law prevented DMAS from offering PACE services as a State Plan Option.

No policy alternatives were discarded in favor of the options proposed here. The Balanced Budget Act of 1997 allows states to choose whether or not to provide PACE services. The Virginia General Assembly has chosen to provide PACE services as an optional state plan service. This action is to promulgate permanent regulations. The effect of this State Plan Amendment and regulatory action on families will be supportive in that their elderly members will be able to remain in their homes longer without having to be institutionalized in nursing facilities. This action is intended to adopt the emergency regulations into the permanent regulations with minor or no changes.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

At the time that DMAS proposed its regulations, it expected a PACE provider to be ready to operate when the regulations became effective. This is now not the case so this final regulation shows that there are no full PACE providers in the Commonwealth.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Director of the Department of Medical Assistance Services adopted this final regulation on May 2, 2000.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, §32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. On November 10, 1999, the Director approved the initiation of a public comment period for the proposed regulations. The proposed regulations were published at 16 VR 9:1114 (Jan. 17, 2000). The Code, in §9-6.14:7.1 et seq., requires agencies to adopt and amend regulations subject to public notice and comment when the action being taken does not meet one of the statutory exemptions.

DMAS' statutory authority for a PACE program derives from both state and Federal authority. In Chapter 853 of the 1995 of the Virginia Acts of Assembly Item 396 Q, the General Assembly directed DMAS to seek an § 1115 (a) (to the Social Security Act) demonstration

waiver from HCFA to implement one or more Programs of All-Inclusive Care for the Elderly (PACE), to be effective July 1, 1995. The Balanced Budget Act of 1997 §§ 4802 and 4803 established and defined the PACE program by creating the new § 1934 of the Social Security Act, to be an optional Title XIX service.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposal is to promulgate permanent regulations for the provision of PACE services for frail, elderly Medicaid recipients. These regulations will link all types of medical care that such individuals might need, through a system of care management to the benefit of the individuals' health, safety, and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The substantive change made in this final regulation over that which was initially proposed is to show that DMAS does not have a PACE contractor ready to be operative July 1, 2000.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

PACE programs provide integrated community-based health care as an alternative to nursing home care, unless that is the appropriate level of care. PACE programs achieve integration by using a multidisciplinary team approach to managing care while providing comprehensive services and preventive care at a lower cost. Program savings result from using a capitated payment model for provider reimbursement rather than a traditional fee-for-service payment model. Program participation (enrollment/disenrollment) in a PACE program is strictly voluntary on the part of the client.

The agency projects no negative issues involved in implementing this proposed change as the entity to be regulated by these regulations (the Sentara Senior Community Care program) has worked directly with DMAS and HCFA to develop its program in compliance with state and federal requirements.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations were published in the January 17, 2000, Virginia Register for their public comment period from January 17 through March 17, 2000. No comments were received from recipients, the affected industry, or any legal organizations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

VAC Citation	Federal Citation	Substance of the Suggested Change
12 VAC 30-50-320		Has been restored to indicate that DMAS does not have any PACE contracts with any contractors. When these regulations were initially proposed for public comment period, DMAS believed that a provider would be ready to become a full PACE provider.
12 VAC 30-120-66		Requirements that DMAS will enforce during the process of considering and agreeing to a PACE contract are set out. These are necessary in order to facilitate the contract approval process and not have it delayed by the long regulatory process.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The entire purpose of a PACE program is to support families. According to the PACE mission, the program : enhances the quality of life and autonomy of frail, older adults; maximizes the dignity and respect of older adults; enables frail, older adults to live in their homes and in the community as long as medically and socially feasible; preserves and supports the older adult's family unit. This program will not affect family income. It will strengthen parental authority and rights and support the marital bond.